IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.120 of 1997
Date of decision:8.12.2006

Commissioner of Income Tax, Patiala

....Petitioner

versus

M/s. Patiala Distillers & Manufacturers Limited, Patiala.

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal'), arising out of its order dated 23.10.1996 in ITA No. 625/Chandi/91, for the assessment year 1989-90:-

> "Whether, on the facts and in the circumstances of the case, the ITAT was right in law in holding that room-coolers, intercom, telephones and calculators constitute part of plant for the purpose of section 32(1)(ii) proviso 1?"

The assessee claimed deduction under Section 32(1)(ii) of the Income Tax Act, 1961 (for short, 'the Act') on electric installations comprising of 13 room coolers and five pairs of calculators on the ground that cost of each of the items was less than Rs.5000/-. Claim for 100% depreciation was disallowed on the ground that the same was not in respect of plant and machinery but in respect of office appliances. The CIT(A) upheld this view. The Tribunal following judgment of the Bombay High Court in **CIT v. Parke Davis (India) Limited,** (1995) 214 ITR 587 allowed the claim of the assessee holding that room coolers, intercoms and calculators installed in the office premises constituted part of plant and machinery and 100% depreciation was allowable if cost of each item is less

than Rs.5000/-.

The question of scope of expression “plant” for which higher depreciation was allowed, was considered by the Hon'ble Supreme Court in S**cientific Engineering House P.Limited v. CIT, Andhra Pradesh,** (1986) 157 ITR 86 and it was held that the expression “plant” need not be given restricted meaning confined to items performing mechanical operations. Applying functional test, it was held that the article should fulfil the function of a plant in assessee's trading activity. The Bombay High Court in **Parke Davi's** case (supra) followed the said view. The said view was reiterated recently by the Hon'ble Supreme Court in **CIT v. Anand Theatres,** (2000) 244 ITRT 192. In **CIT v. Electronics Research Industries Pv.t Limited (Kar.)**, (1991) 192 ITR 20, it was held that internal telephone system was plant. In **CIT v. Tarun Commercial Mills Limtied**, (1985) 151 ITR 75, air-conditioners and electric fans in the office premises were held to be covered by the expression “plant and machinery” and it was held that the said items could not be treated as office appliances. In **Mahindra Ugine Steel Co. Limited v. CIT,** (1993) 203 ITR 383, it was held that fans were covered by the expression “plant”.

In view of the above decisions, the question referred is answered against the revenue and in favour of the assessee.

The reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

December 8, 2006 (Rajesh Bindal)
'gs' Judge